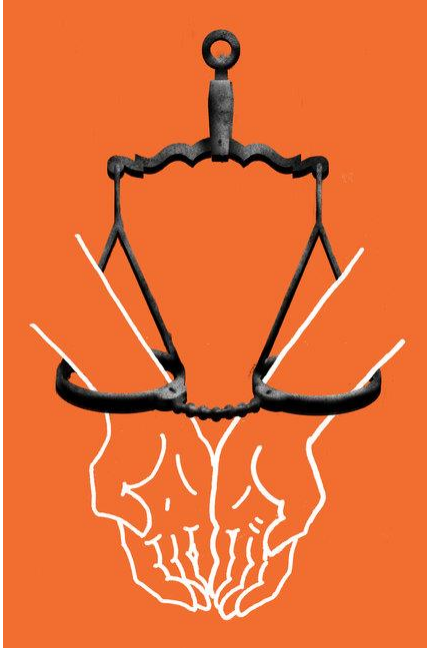


A Mockery of Justice for the Poor

By JOHN PFAFF APRIL 29, 2016



Credit Yarek Waszul

OVER the past year, everyone from the conservative Right on Crime project to the Black Lives Matter movement has pushed criminal justice reform to the forefront of political debates. Yet politicians at every level of government remain almost completely silent about one of the biggest crises facing criminal justice: the utter collapse of indigent defense.

In the landmark case [Gideon v. Wainwright](#), the Supreme Court held in 1963 that the state or local government had to provide a lawyer to any defendant facing prison time who could not afford his or her own. This was no minor decision. [Approximately 80 percent](#) of all state criminal defendants in the United States qualify for a government-provided lawyer.

Yet despite this constitutional guarantee, state and county spending on lawyers for the poor amounts to only [\\$2.3 billion](#) — barely 1 percent of the more than \$200 billion governments spend annually on criminal justice.

Worse, since 1995, real spending on indigent defense has [fallen, by 2 percent](#), even as the number of felony cases has risen by [approximately 40 percent](#).

Not surprisingly, public defense finds itself starved of resources while facing impossible caseloads that mock the idea of justice for the poor.

In Fresno, Calif., for instance, public defenders have caseloads that are [four times](#) the recommended maximum of around 150. In Minnesota, one public defender followed by a reporter estimated that he had about [12 minutes](#) to devote to each client that day. There is no way these lawyers can manage the cases being thrown at them.

In New Orleans, caseloads are so high that the parish's public defender office has started to [refuse to take cases](#), including murder cases. Public defender offices in other states, including Florida, Missouri, New York and Pennsylvania, have taken similar steps when caseloads have grown too heavy.

To make things worse, [43 states](#) now require indigent defendants to pay at least a portion of their lawyers' fees, even though these defendants are by definition indisputably poor.

The situation in South Dakota highlights the insanity of this. South Dakota [charges a defendant \\$92 an hour](#) for his public defender, owed no matter the outcome of the case. If a public defender spends 10 hours proving that her client is innocent, the defendant still owes the lawyer \$920, even though he committed no crime and his arrest was a mistake.

Failure to pay is a crime. Someone who qualifies as indigent may be acquitted, only to be convicted of being too poor to pay for the legal services the Constitution requires the state to provide.

This is not justice.

There is, however, a way out of this, one that the presidential candidates of both parties should embrace, one that should have broad bipartisan appeal. And it is an approach that no one is talking about.

The federal government, which now provides just a [few million dollars](#) per year to prop up local indigent defense services, could make an annual grant of \$4 billion to state and local governments for indigent defense. This is a mere 0.3 percent of the federal government's approximately [\\$1.2 trillion discretionary budget](#). This money would triple spending on indigent defense, especially if the grant was tied to pre-existing spending by local governments so they couldn't just cut their own spending one-for-one with the grant.

For Democrats, this plan would target a major cost of poverty and inequality and, because of the correlation between wealth and race, it would tackle at least some of the racial imbalances that permeate the criminal justice system.

For Republicans, who worry about state overreach and the government's ability to oppress its citizens, meaningful public defense ensures that the poor, too, are able to check the state when it is acting in its most powerful capacity.

Funding indigent defense would also help scale back mass incarceration, a goal both parties share. [My research](#) has shown that the primary source of prison growth in the 1990s and 2000s has been prosecutors' filing of felony charges against more and more arrestees, many of whom in

the past would have faced misdemeanor charges or no charges at all. Ensuring that prosecutors' opponents are able to do their jobs competently would dampen prosecutorial aggressiveness.

Tellingly, as public defender caseloads have soared amid shrinking budgets, prosecutor caseloads appear to have held [relatively steady](#), as funding and hiring of prosecutors [generally rose](#) over roughly the last 20 years. Public defenders find themselves at an increasing disadvantage, surely contributing to our nation's inability to really rein in prison population growth.

If defendants had well-funded, effective representation, our adversarial system would do what it is intended to do. What we have right now, however, simply is not adversarial: relatively well-funded, well-staffed prosecutor offices square off against public defenders whose caseloads defy imagination.

Funding public defense would ensure that poor people's constitutional rights are protected, would advance a commitment to justice shared by liberals and conservatives alike, and would help roll back our staggering prison population.

It is also feasible, cheap by federal standards, and would have powerful, long-lasting effects.

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